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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOEL ALONZO BENNETT,

Defendant and Appellant.

F071015

(Super. Ct. No. SF015228A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Kenneth C. Twisselman II, Judge.

Rebecca P. Jones, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Harry Joseph Colombo, Deputy Attorneys General, for Plaintiff and Respondent.

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*Before Poochigian, Acting P.J., Detjen, J. and Peña, J.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant Joel Alonzo Bennett was convicted in March 2010 of two counts of indecent exposure (Pen. Code, § 314, subd. 1).¹ The trial court found true allegations defendant had seven prior serious felony convictions within the meaning of the three strikes law. The prior strike convictions were for robbery (§§ 211, 212.5) in 1991, 2008, and 2009. Defendant had four kidnapping convictions (§§ 207, 208) in 1993 after kidnapping a family, including two children, by commandeering the victims' vehicle during an escape from state prison. The trial court sentenced defendant to serve two concurrent sentences of 25 years to life consecutive to his current prison sentence for the indecent exposure convictions.

On October 2, 2014, defendant's counsel filed a petition to recall his sentence pursuant to the Three Strikes Reform Act of 2012 (Proposition 36) and section 1170.126. The People opposed the motion, noting that in addition to his prior felony convictions, defendant had over 40 violations of prison rules for indecent exposure often involving masturbation, mutual combat, possession of a deadly weapon, and for threatening staff. Defendant filed an additional brief on February 9, 2015, adding to his motion that the trial court should apply section 1170.18 enacted by the Safe Neighborhoods and Schools Act (Proposition 47) passed by the voters on November 4, 2014, to his case as well.

The trial court denied defendant's motion to recall his sentence, finding release of defendant would result in an unreasonable risk of danger to public safety. Defendant contends the trial court erred in failing to apply the Proposition 47 standard of dangerousness to him because it should apply retroactively.² Defendant also argues the trial court abused its discretion in denying his motion to recall his sentence under Proposition 47's definition of risk of danger to the public, and even if that definition does

¹Unless otherwise designated, all statutory references are to the Penal Code.

²We grant defendant's pending motion to take judicial notice of the ballot pamphlet information on Proposition 47.

not apply to defendant's case, the trial court still abused its discretion in denying his motion. In light of this court's recent decision in *People v. Buford* (2016) 4 Cal.App.5th 886 (*Buford*), we reject defendant's contentions and affirm the trial court's order denying the petition.

DISCUSSION

In *Buford*, this court found that when a defendant is seeking resentencing pursuant to section 1170.126, subdivision (b), the People have the burden of proving by a preponderance of the evidence facts on which a defendant would pose an unreasonable risk of danger to public safety. Our court found, however, that the trial court need not make its public safety finding by a preponderance of the evidence, and its decision is reviewed under the abuse of discretion standard. (*Buford, supra*, 4 Cal.App.5th at pp. 893-901.) *Buford* held that section 1170.126, subdivision (f) does not contain a presumption a petitioner's sentence must be reduced. (*Buford, supra*, at pp. 901-903.)

Section 1170.18 permits a defendant currently serving a felony sentence for an offense that is a misdemeanor after the enactment of Proposition 47 to petition the court to recall his or her sentence and request a new sentencing hearing. The majority opinion in *Buford*, authored by Justice Detjen, determined that section 1170.18 does not modify section 1170.126, subdivision (f). (*Buford, supra*, 4 Cal.App.5th at pp. 903-914.) The majority opinion further noted that were it to find section 1170.18 did modify section 1170.126, subdivision (f), it would find Proposition 47 does not apply retroactively. (*Buford, supra*, 4 Cal.App.4th at p. 913, fn. 28.)

The concurring opinion by Justice Peña disagreed with the *Buford* majority on the effect of section 1170.18, subdivision (c) on section 1170.126, subdivision (f), but concluded Proposition 47 does not apply retroactively. (*Buford, supra*, 4 Cal.App.5th at pp. 914-920 (conc. opn. of Peña, J.).)

Applying these principles here, we note a majority of justices in *Buford* found that section 1170.18 enacted by Proposition 47 did not modify section 1170.126. All of the

justices in *Buford* concluded Proposition 47 did not apply retroactively. We, therefore, reject defendant's arguments that he was entitled to resentencing pursuant to section 1170.18 and the trial court applied an improper standard in denying his petition.

Even if we were to find defendant was entitled to a resentencing hearing under section 1170.18, we conclude the trial court did not abuse its discretion in finding defendant posed a continuing risk to public safety. Defendant had relatively recent robbery convictions in 2008 and 2009. Defendant's multiple prison violations and more recent convictions for indecent exposure appear to be more than just a compulsion caused by psychological problems as defendant argues on appeal. Assuming *arguendo* that defendant's exposure episodes were caused by a psychological disorder, he had other violations of prison regulations that included assaults on prison staff, mutual combat, and other rule violations. Defendant's contentions on appeal are rejected. The trial court did not err in rejecting defendant's petition for resentencing.

DISPOSITION

The order denying defendant's petition for resentencing is affirmed.